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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,806	08/23/2001	Dellas G. Frederiksen	10005155-1	9598

7590 07/11/2005

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

LUU, LE HIEN

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,806

Applicant(s)

FREDERIKSEN, DELLAS G.

Examiner

Le H. Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-20 are presented for examination.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tominaga, Pub. No. 2002/0015180, in view of Ferlitsch et al. (Ferlitsch), Pub. No. 2002/0089687.

4. As to claim 1, Tominaga teaches the invention substantially as claimed including a compute cycle brokering apparatus comprising:

- a) a network (FIG. 1A and FIG. 1B);
- b) a plurality of machines connected to said network wherein some machines are idle and some machines are busy (page 8, para. [0172 – 0175]); and
- c) a process power broker (FIG. 1A, document server 102) connected to said network for locating available process power on idle machines (page 9, para. [0191]; wherein the idle printers are found by the system). However, Tominaga fails to teach directing pending jobs from busy machines to said idle machines for processing.

Fertitsch teaches a print processor that can detect status of printing devices such as printing device is offline, busy, ready to print, etc. If a print task is initially directed to a printing device that is unavailable, busy, or otherwise unable to function for the current task, the print processor redirects the print task to another printing device that is available for use. This device to which the task is directed may be the device initially selected by a user, or another device selected by the print processor according to availability or some other parameters (pages 1 and 3-4, para. [0012], [0033], and [0041-0047]).

It would have been obvious to one of ordinary skill in the Computer Art at the time of the invention to combine the teachings of Tominaga and Ferlitsch to direct pending jobs from busy printers to printers that are ready to print or idle because it would prevent printing task delays when a default or preferred printer or printers are busy.

5. As to claim 2, Ferlitsch teaches the process power broker includes a job director for directing job output back to the busy machine for output (pages 4 and 6, para. [0048] and [0062]).

6. As to claim 3, Ferlitsch teaches the process power broker includes a job director for directing job output to the first available machine for output (pages 3-4 para. [0040-0041]).

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7. As to claims 4-5, Tominaga the machines are MFPs and printers (page 2 para. [0050]).

8. As to claim 6, Tominaga teaches the network comprises an intranet (paragraph [0047]; wherein the private network is the intranet).

9. As to claim 7, Tominaga teaches the network comprises an Internet (paragraph [0047]; wherein the public network is the Internet).

10. Claims 8-20 have similar limitations as to claims 1-7; therefore, they are being rejected under the same rationale.

11. Claims 1-20 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 09/847,878. Although the conflicting claims are not identical, they are not patentably distinct from each other because the context of the claimed invention is the same as the context of the cited claims of the U.S. patent applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public

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policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

13. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

14. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. In the remarks, applicant argued in substance that

(A) Prior art does not teach directing pending jobs from busy machines to idle machines for processing.

As to point (A), Fertitsch teaches a print processor that can detect status of printing devices such as printing device is offline, busy, ready to print, etc. If a print task

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is initially directed to a printing device that is unavailable, busy, or otherwise unable to function for the current task, the print processor redirects the print task to another printing device that is available for use. This device to which the task is directed may be the device initially selected by a user, or another device selected by the print processor according to availability or some other parameters (pages 1 and 3-4, para. [0012], [0033], and [0041-0047]).

16. Applicant's arguments filed on 03/04/05 have been fully considered but they are not deemed to be persuasive.

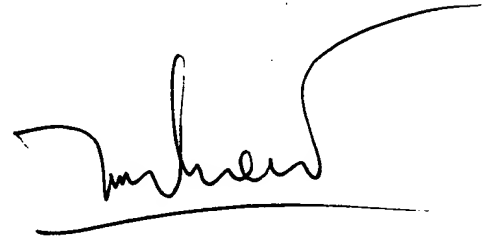
17. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu whose telephone number is 571-272-3884. The examiner can normally be reached on 7:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Le Hien Luu', with a long horizontal line extending to the right.

LE HIEN LUU
PRIMARY EXAMINER

June 30, 2005